

## **May 2004 Unified Program Newsletter**

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### **State Water Resources Control Board**

#### **UST Inspector Training Class**

Laura Chaddock will give her Underground Storage Tank (UST) Compliance Inspection Training class at the Cal/EPA Building, in the Central Valley Auditorium, on May 10, 2004, from 8:30 AM - 4:30 PM. There is no cost to attend this class; however, PRE-REGISTRATION IS REQUIRED. As of May 6th, the class is full. However, we've included it in this update to remind you that this training is not a preparatory class for the International Code Council (ICC) California UST Inspector exam, which is under development by ICC. UST Program Contact: Deanna Flanagan, [flanagid@swrcb.ca.gov](mailto:flanagid@swrcb.ca.gov), (916) 341-5851.

#### **June 15, 2004 - UST Compliance Inspection Training**

SWRCB staff will be providing UST Compliance Inspection Training on June 15, 2004 from 8:30 AM - 4:30 PM in Martinez. Contra Costa Health Services, Hazardous Materials and Shell Oil Products, Martinez Refinery Company are hosting this training and will provide morning refreshments. There is no cost to attend this training. Training will be held at 1635 Pacheco Blvd., Martinez, CA 94553.

#### **International Code Council (ICC) Exams Update**

More than 50 percent of the "Occupational Analysis Survey of the California UST Inspectors" mailed to local agencies were completed and returned to ICC. This represents an excellent return rate. The results of the survey were discussed at the April 26-27, 2004, inspector exam committee meeting. The committee will hold one more meeting in early June. The exam should be available by September 2004. UST Program Contact: Erin Ragazzi ([ragazzie@swrcb.ca.gov](mailto:ragazzie@swrcb.ca.gov); 916-341-5863)

#### **Service Technician**

The ICC California UST Service Technician exam is now available. For information on the exam, please visit the ICC website at: <http://www.iccsafe.org/certification/bulletin.html>. Click on the link for the "AST/UST (National and State specific)" under "Candidate Bulletin". The bulletin shows how to make an exam reservation and other exam details.

UST Program Contact: Laura Chaddock, [chaddocl@swrcb.ca.gov](mailto:chaddocl@swrcb.ca.gov), 916-341-5870

#### **Training Regulations**

The UST "Training Plus" Regulations were approved by the Office of Administrative Law (OAL) on April 8, 2004. The regulations have been filed with the Secretary of State, and will become effective on May 8, 2004. SWRCB UST Program staff are currently working on outreach efforts to help local agencies

inform the regulated community about the new requirements. In the coming weeks, we plan to add a "Training Regulations" page to the UST Program website ([www.swrcb.ca.gov/ust](http://www.swrcb.ca.gov/ust)), mail a letter to all local agencies, and prepare a flyer for UST owners/operators.

UST Program Contacts: Scott Bacon, [bacons@swrcb.ca.gov](mailto:bacons@swrcb.ca.gov), 916-341-5873  
Joshua Grover, [groverj@swrcb.ca.gov](mailto:groverj@swrcb.ca.gov), 916-341-5868

### **Red Tag Regulations**

The Office of Administrative Law (OAL) is reviewing the "Red Tag" regulations and their deadline is May 18, 2004. Information on the UST "Red Tag" regulations is available on the SWRCB UST Program website ([www.swrcb.ca.gov/ust](http://www.swrcb.ca.gov/ust)).

UST Program Contact: Leslie Alford, [alfordl@swrcb.ca.gov](mailto:alfordl@swrcb.ca.gov), 916-341-5810

### **Electronic Submittal of Information Regulations**

On April 22, 2004, the SWRCB approved and adopted the proposed regulations on Electronic Submittal of Information. On April 26, 2004, the final rulemaking record was submitted to the Office of Administrative Law (OAL) for final review. OAL has 30 working days to review the rulemaking. Information on these proposed regulations is available on the SWRCB UST Program website ([www.swrcb.ca.gov/ust](http://www.swrcb.ca.gov/ust)). UST Program Contact: Kevin Graves ([gravesk@swrcb.ca.gov](mailto:gravesk@swrcb.ca.gov); 916-341-5782)

### **Continued Reporting of Piping Failure To Underwriters Laboratories (UL)**

Please continue to report any problems with product piping degradation and/or failures bearing a UL mark directly to UL. To file a report complete the Consumer Product Report Form online at:

<https://www.ul.com/consumers/conproddb.cfm>. Also, please send a copy of your report to:

Laura Chaddock, State Water Resources Control Board, Division of Water Quality, Groundwater Quality Branch, PO Box 2231, Sacramento, CA, 95812.

UST Program Contact: Laura Chaddock, [chaddocl@swrcb.ca.gov](mailto:chaddocl@swrcb.ca.gov), 916-341-5870

### **Enhanced Leak Detection Notifications/Requests for Reconsideration**

According to the latest information, a total of 2,600 SW/DW UST facilities have been notified to conduct enhanced leak detection (ELD) because they are located within 1,000 feet of a public drinking water well.

Total number of SW UST Facilities: 654

Total number of DW UST Facilities: 1,936

Total number of miscellaneous UST Facilities: 10

Total number of RFR received: 562

\* Approved: 467

\* Denied: 68

\* Incomplete: 3

\* In process: 24

UST Program Contact: Ahmad Kashkoli [kashkola@swrcb.ca.gov](mailto:kashkola@swrcb.ca.gov)

### **Department of Toxic Substances Control**

#### **Mercury Switch Workshops**

DTSC will be conducting four Mercury Waste Workshops focusing on implementation of SB 633 and DTSC's mercury regulations for the following dates and locations:

June 15	8800 Cal Center Drive, Sacramento 95826
June 16	700 Heinz Avenue, Berkeley 94710
June 22	5796 Corporate Avenue, Cypress 90630
June 23	9174 Sky Park Court, San Diego 92123

These no-cost workshops will consist of two sessions per day. For businesses that dismantle, crush, shred or repair vehicles, the sessions will be from 9:30 AM to 11:30 AM, and for appliance businesses from 1:30 PM to 3:30 PM. Attached are a flyer and draft agenda. If you have any questions, please contact Sonia Low at 916-323-9757.

## **Office of Emergency Services**

### **New Chemical Safety Alert for Facilities Using Excess Flow Valves**

EPA recently issued an alert to highlight the hazards of relying on excess flow valves as the primary protection to control accidental chemical releases from tanks and piping.

Following the investigation of a hazardous materials incident which resulted in the deaths of three plant employees and the evacuation of 2,000 nearby residents, the National Transportation Safety Board (NTSB) recommended that EPA notify facilities required to submit Risk Management Plans (RMPs) under the Clean Air Act 112(r) that tank car excess flow valves cannot be relied upon to stop leaks that occur during tank car loading and unloading operations.

EPA agrees with the NTSB recommendation and developed this alert titled "Failures of Excess Flow Valves in Hazardous Materials Service" to provide information on the circumstances that can lead to excess flow valve failures, important design and operational factors for enhancing their reliability, and alternate safeguards available for stopping uncontrolled releases. This alert is available on the EPA website at: <http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/ap-chsa.htm>.

## **Enforcement**

### **Eight Wilmington Businesses Charged With Environmental Violations**

LOS ANGELES - Eight businesses, ranging from an auto repair shop to a major sandblasting company, were each charged with multiple criminal counts for creating environmental hazards in Wilmington following a series of ongoing multi-agency inspections, City Attorney Rocky Delgadillo announced. Attached is the complete article.

### **Court Ruling May Lead To Increased Sentencing For Environmental Crimes**

A federal appeals court is endorsing arguments by U.S. prosecutors that violations of the public trust -- a charge usually reserved for public officials -- can also be used to justify increased sentences for industry officials.

Industry attorneys say [the recent ruling](#) by the U.S. Court of Appeals for the 7th Circuit in *U.S. v. Snook* demonstrates a 10-year trend toward stricter sentences for environmental violations, and could lead to increased sentences for industry officials in a wide array of environmental enforcement cases.

This may mean that "every environmental violation would be an abuse of public trust" eligible for stricter sentencing, one industry attorney says.

A Justice Department attorney would not comment on the scope of the decision, but was unaware of any similar cases.

Moreover, some industry sources say the trend of stricter sentences for criminal violations of environmental laws is likely to continue in the wake of a recently enacted law to enhance sentences for violations of child pornography laws. Critics including high court justices, lawmakers and defense attorneys say the child pornography law's provisions could also result in enhanced sentences for violators of environmental laws.

The law, known as the PROTECT Act, makes it difficult for federal judges to "adjust downward" sentencing recommendations issued by the U.S. Sentencing Commission. The commission is a congressionally chartered body that issues sentencing guidelines for all federal crimes, including environmental crimes.

Most environmental laws set maximum sentences for criminal violations, while providing federal judges with discretion to set more lenient sentences. Judges then rely on the sentencing guidelines to set specific sentences.

The sentencing recommendations issued by the commission are determined by "offense levels" that correspond to the severity of the crime and the offender's criminal history.

The guidelines also recommend that offense levels be increased for reasons that apply to all violations, such as violations of the "trust" and obstruction of justice, as well as more statute-specific violations, such as repeated illegal discharges under environmental laws.

The sentencing guidelines call for a two-level increase in offense level when a defendant occupies a position of trust and abuses that trust to facilitate a crime. Until now, courts have applied the increase when a defendant has abused a position of trust to "significantly facilitate" a crime. For example, in *U.S. v. Cruz*, the 7th Circuit in January 2003 upheld an enhanced sentence for convictions stemming from a company bank fraud scheme because the conviction stemmed from an abuse of company trust.

Until now the courts have limited claims about the public trust to justify enhanced sentences for environmental crimes committed by public officials. For example, the 6th Circuit last October reversed a decision by a district court to ease sentencing in a case involving a Clean Water Act violation. The 6th Circuit ruled in *U.S. v. Kuhn* that the violator was eligible for an enhanced sentence due to his position as superintendent of a public wastewater system.

Now, the 7th Circuit, by a 2-1 decision, has extended that argument to an industry official. In *Snook*, the court rejected arguments by Ronald Snook, the environmental manager of a Chicago-area refinery, that his position did not put him in a position of public trust and that he was therefore not eligible for an enhanced sentence for criminal violations of Clean Water Act reporting requirements.

The 7th Circuit disagreed, noting that the water law "is public welfare legislation and the victims of the violation are the public."

"Moreover," the court says in its ruling, "unlike other self-reporting situations (taxpayers, for example), the [clean water] regulations here apply to matters that directly and significantly affect the public's health and safety."

In this case, the appeals court upheld a district court ruling to apply a "two-level increase in offense level" to Snook's sentence, resulting in a sentence of 21 months imprisonment, two years of supervised release, a \$1,000 fine and \$600 in special assessments. Two-level enhancements result in several months of increase in jail time.

But a dissenting judge in the case, as well as industry officials, say that Snook was not eligible for an enhanced sentence because he was employed by a private company and had not been placed in a position of trust by the public.

In his dissent, Judge John Coffey points to a 9th Circuit decision in *U.S. v. Technic Services, Inc.*, which found that, while the importance of public safety laws may heighten public interest, they do not establish the kind of interest required to determine a position of public trust.

One industry attorney says the broad language in the 7th Circuit's ruling means that the court's interpretation of the public trust enhancement could possibly affect "many other health and welfare statutes" that could be seen as having an effect on public health and safety. Another attorney notes that "it could be interpreted by government prosecutors [as an invitation] to 'pile on' and add [jail time] to criminal sentences."

Several industry attorneys also say that sentences for criminal violations of environmental statutes have grown increasingly tough over the past 10 years. "The general impression," one industry attorney explains, "is that over the past 10 years we see examples of bigger and bigger penalties -- both in terms of jail time and in terms of fines."

The *Snook* decision comes only days after the 11th Circuit [affirmed a lower court's four-level sentence enhancement](#) in *U.S. v. Perez* for clean water discharges without a permit. The 11th Circuit rejected Emilio Perez' arguments that the district court engaged in "impermissible double counting" by adding four offense levels to his sentence. Perez argued that his failure to obtain a permit was already taken into account in determining his base, or initial, offense level for the crime of unlawfully discharging pollutants into wetlands.

However, the 11th Circuit disagreed in its April 20 ruling, stating that Perez's base offense level "only involved the 'mishandling' of environmental pollutants . . . His failure to procure a permit was a distinct offense which, pursuant to sentencing guidelines, warranted its own enhancement." Perez was sentenced to 36 months in jail, three years of supervised release and a \$25,000 fine.

The ruling says that *Perez* is the first time this argument has come up in the 11th Circuit, but notes that the 4th, 5th and 6th Circuits have all addressed and rejected the same argument. -- *Matt Shipman*

**The Unified Program Section is interested in your comments and suggestions regarding the newsletter. Please provide comments and suggestions to Anie Wilson at (916) 327-9559 or [awilson@calepa.ca.gov](mailto:awilson@calepa.ca.gov).**

**[Cal/EPA Unified Program Home Page](#)**



# Mercury Waste Management Workshops

The Department of Toxic Substances Control (DTSC) recently adopted regulations establishing new requirements for the management of discarded products that have mercury-containing parts, like those found in vehicles and major appliances. The hazardous waste regulations and California's Mercury Reduction Act of 2001 affect automobile dismantlers, automobile repair shops, scrap recyclers, appliance repair shops, household hazardous waste collection centers, and any business that handles discarded automobiles or major appliances.

DTSC will conduct four workshops to show you where the switches are located, how to remove them safely, how to manage the removed switches, and how to install non-mercury switches. The workshops will answer the following questions:

1. What requirements must I follow today/tomorrow?
2. How can I economically and safely manage these mercury-containing wastes?
3. What are the consequences of not complying with State regulations?

The no-cost workshops will consist of two sessions per day. For businesses that dismantle, crush, shred or repair **vehicles**, the sessions will be from 9:30 AM - 11:30 AM. For businesses that dismantle, crush, shred or repair **appliances**, the sessions will be from 1:30 PM - 3:30 PM.

**BONUS: The first 25 businesses to sign in at each session will receive a mercury spill kit (limit one kit per business).**

If you have any questions, please contact Clyde West at (916) 324-1804.

## June 15 - Sacramento

8800 Cal Center Drive  
Sacramento, CA 95826

## June 16 - Berkeley

700 Heinz Avenue  
Berkeley, CA 94710

## June 22 - Cypress

5796 Corporate Avenue  
Cypress, CA 90630

## June 23 - San Diego

9174 Sky Park Court  
San Diego, CA 92123

**Department of Toxic Substances Control**

**MERCURY WASTE MANAGEMENT WORKSHOPS**

**June 15, 2004: 8800 Cal Center Drive, Sacramento**

**June 16, 2004: 700 Heinz Avenue, Berkeley**

**June 22, 2004: 5796 Corporate Avenue, Cypress**

**June 23, 2004: 9174 Sky Park Court, San Diego**

Morning session focuses on Mercury Switches in Vehicles.

9:15 – 9:30 AM	Sign in for workshop
9:30 – 9:40 AM	Background and Introduction
9:40 – 10:30 AM	Technical Discussion
10:30 – 10:40 AM	Break
10:40 – 11:00 AM	Demonstration
11:00 – 11:20 AM	Questions and Answers
11:20 – 11:30 AM	Evaluations, Certificates & Closing Remarks

Afternoon session focuses on Mercury Switches in Major Appliances.

1:15 – 1:30 PM	Sign in for workshop
1:30 – 1:40 PM	Background and Introduction
1:40 – 2:30 PM	Technical Discussion
2:30 – 2:40 PM	Break
2:40 – 3:00 PM	Demonstration
3:00 – 3:20 PM	Questions and Answers
3:20 – 3:30 PM	Evaluations, Certificates & Closing Remarks

**FOR IMMEDIATE RELEASE**

May 7, 2004

**Contact: Frank Mateljan**

(213) 978-8340

## **Eight Wilmington Businesses Charged With Environmental Violations**

*City Attorney Rocky Delgadillo's Environmental Justice Unit Coordinates  
Multi-Agency Task Force to Ensure Compliance with the Law*

**LOS ANGELES** – Eight businesses, ranging from an auto repair shop to a major sandblasting company, were each charged with multiple criminal counts for creating environmental hazards in Wilmington following a series of ongoing multi-agency inspections, City Attorney Rocky Delgadillo announced.

“Since we began our Wilmington Initiative nearly a year ago, industrial and commercial polluters have been put on notice that protecting our environment and natural resources remains a top priority and those who place our natural resources at risk will be prosecuted,” said Delgadillo. “We will continue to be vigilant and decisive in our ongoing fight to bring long overdue environmental justice to the residents who live near Wilmington.”

“The community of Wilmington has historically been neglected and under served. I want to thank the City Attorney for committing to cleaning up Wilmington and for following through,” said Councilwoman Janice Hahn, who represents Wilmington. “Together, we are improving this community and sending a clear message that we will no longer tolerate people using Wilmington as a dumping ground. I hope to work closely with the City Attorney to bring these polluters to justice.”

The eight criminal cases filed by Delgadillo's Environmental Justice Enforcement and Compliance Team (EJECT) are part of the Wilmington Initiative which was launched on June 5, 2003. Since then, the initiative has resulted in 22 criminal filings for environmental violations.

The most significant of the eight cases was a 14-count criminal complaint against AJC Sandblasting Inc., following inspections in August 2003 by the Los Angeles County Fire Department Hazmat Division and the California Regional Water Quality Control Board.

AJC Sandblasting was charged with recklessly storing hazardous waste and flammable solvents which could result in fire, explosion, serious injury or death; a charge carrying a penalty up to \$250,000 for each day of violation and one year in jail according to Deputy City Attorney Vaughn Minassian.

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- Penalties: Up to six months in jail and/or \$1,000 fine for each count.

**Domingo Vazquez, dba California Auto Dismantler**, 931 Vreeland Avenue, was inspected July 22, 2003, by Los Angeles County Fire Department Hazmat Division and the Los Angeles Department of Building & Safety. Arraignment is scheduled for June 11.

- Count 1 - Failure to implement a contingency plan.
- **Count 2 - Failure to obtain permit.**
- Count 3 - Unlawful construction of office trailer.
- Count 4 - Use of land other than was permitted.

- Penalties: Up to six months in jail and/or \$1,000 fine for each count.

**Javier Lopez, dba Shorty Body Shop**, 932 Henry Ford Avenue, was inspected on June 26, 2003, by the Los Angeles County Fire Department Hazmat Division and the Los Angeles Department of Building and Safety. Arraignment is scheduled for June 11.

- Count 1 - Failure to properly label hazardous waste container.
- Count 2 - Failure to implement a contingency plan.
- Count 3 - Unlawful construction of office trailer.
- Count 4 - Use of land other than was permitted.
- Count 5 - Failure to comply with an order issued by the Department of Building and Safety
- Penalties: Up to six months in jail and/or \$1,000 fine for each count.

**Jose G. Villalpando, dba Refections Auto Body**, 1211 W. Anaheim Street, was inspected June 12 and July 14, 2003, by the Los Angeles County Fire Department and the Los Angeles Department of Building and Safety, City Watershed Protection Division. Arraignment is scheduled for June 14.

- Count 1 - Discharge of non-stormwater to the storm drain system.
- Count 2 - Failure to properly label hazardous waste container.
- Count 3 - Failure to implement a contingency plan.
- Penalties: Up to 6 months jail and/or \$1,000 fine for each count.

**Rigoberto Gutierrez, dba Astro Auto Dismantlers**, 1002 N. Schley Avenue, was inspected July 8, 2003, by Los Angeles County Fire Department, California Regional Water Quality Control Board, and the Los Angeles Department of Building and Safety. Arraignment is scheduled for June 11.

- Count 1 - Failure to properly label hazardous waste container.
- Count 2 - Failure to implement a contingency plan.
- Count 3 - Failure to provide classroom instruction or on-the-job training program.
- Count 4 - Failure to maintain records of training.
- Count 5 - Failure to implement best management practices required by the Storm Water Pollution Prevention Plan.

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- Count 6 - Obstructing public right of way (sidewalk) with vehicles and vehicle parts and trash.
- Penalties: Counts 1-4 and 6 – Up to 6 months jail and/or \$1,000 fine  
Count 5 - Up to one year jail and/or fines between \$5,000 and \$25,000 per day of the violation.

**Guadalupe J. Rivas, dba Lupe's Auto Sales & Dismantling**, 918 N. Schley Avenue, was inspected June 5, 2003, by Los Angeles County Fire Department, California Regional Water Quality Control Board, and the Los Angeles Department of Building and Safety. Arraignment is scheduled for June 11.

- Count 1 - Failure to implement best management practices required by the Storm Water Pollution Prevention Plan.
- Count 2 - Failure to implement a contingency plan.
- Count 3 - Failure to provide for a solid fence or wall within M3 zone.
- Count 4 - Unlawfully stored cars at a height greater than the fence.
- Counts 5 and 6 - Construction and use of a building without a building permit.
- Count 7 - Obstructing public right of way (sidewalk) with vehicles and vehicle parts and trash.
- Penalties: Count 1: Up to one year jail and/or fines between \$5,000 and \$25,000 per day of violation  
Counts 2-7: Up to 6 months jail and/or \$1,000 fine for each count.

**Allen Alevy, dba CBA Industries** in Wilmington was inspected March 3. Arraignment is scheduled for June 11, 2004.

- Count 1 - Use of land other than was permitted without securing a permit.  
Alevy improperly uses his vacant lot for truck storage without a permit.
- Count 2 - Failure to comply with order issued by Los Angeles Department of Building and Safety. Alevy continues with truck storage without a permit.
- Penalties: Up to 6 months jail and/or \$1,000 fine for each count.

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